

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STEPHEN GILL, ET AL.,)
Plaintiffs,)
)
v.) C.A. No. 05-10309-MLW
)
UNITED STATES OF AMERICA,)
Defendant.)

MEMORANDUM AND ORDER

WOLF, D.J.

January 9, 2006

The government has moved to dismiss or stay this case pending a determination by the Secretary of Labor concerning whether plaintiffs are entitled to compensation for the matters at issue in this case under the Federal Employees Compensation Act, 5 U.S.C. §8101 et seq. (the "FECA"). Alternatively, the government requests that this case be transferred to an appropriate District in Florida. Plaintiffs oppose the government's motion.

If a claim is covered under the FECA, the federal courts do not have subject matter jurisdiction over it. See Bruni v. United States, 964 F.2d 76, 79 (1st Cir. 1992).

Resolution of the coverage question has been entrusted to the Secretary of Labor. 5 U.S.C. §8128(b). Thus, the employee must first seek and be denied relief under the FECA unless his/her injuries do not present a substantial question of compensability under the act. Somma v. United States, 283 F.2d 149, 150-51 (3rd Cir. 1960). A substantial question exists unless it is certain that the Secretary would not find coverage.

Id. (emphasis in original).

The government's submission indicates that it is not, as a

matter of fact or law, certain that plaintiffs claims are not covered by the FECA. Indeed, it appears that there is a significant possibility that their claims are covered by the FECA.

Accordingly, it is hereby ORDERED that:

1. The United States' Motion to Dismiss or in the Alternative for a Stay (Docket No. 7) is ALLOWED.

2. This case is DISMISSED without prejudice to being reinstituted if the Secretary of Labor decides that the FECA does not cover the plaintiffs' claims.

/S/ MARK L. WOLF
UNITED STATES DISTRICT JUDGE